the deceased. Then Loganathan left the liquor shop and he noticed Loganathan had a knife by the side of his waist. His friends became frightened and so they paid for their drinks and went outside and remained outside for a while. He told his friends not to be frightened and to wait for him. He went to his aunt's house, changed his shirt and took a kitchen knife for his protection and then returned to the same liquor shop. Not seeing his friends outside, he went in thinking they had gone into the liquor shop. On entering he saw Loganathan and the deceased seated at a table. The deceased called him to their table, asked him to sit down and to have a drink with them. Although he declined the offer of a drink, the deceased ordered a quarter bottle of Chinese wine, poured the contents into three glasses and started to drink. They talked aggressively to him. Then he saw Loganathan leave the liquor shop and saw him talking to Suppiah and then return to the table. Then he saw Suppiah beckoning him to come out. He went out and Suppiah spoke to him. The deceased also came out and spoke to him. Then Suppiah who was with a girl left and the appellant and the deceased returned into the liquor shop and he was asked to drink. After that all three left the liquor shop and outside Loganathan and the deceased started punching him. He tried to ward off their punches by swinging his arms wildly and vaguely remembered he had something in his hand. Suddenly the deceased took off in one direction and Loganathan in another. He saw people gathering around and he also ran back to his aunt's house. He was drunk and dizzy and only vaguely remembered he was holding something. On arriving at his aunt's house, he saw a knife in his hand and blood on his hands. Shortly after his aunt told him that his father was very sick and that he should return to his own home, which was in Johore. His aunt took him to a bus stop and put him on a bus to Johore Bahru. On arriving at Johore Bahru, he took a taxi home to Kluang.

The trial judges rejected the appellant's evidence that he was assaulted by Loganathan and the deceased and that he defended himself by swinging his arms wildly. They accepted the evidence of Loganathan and found that the injuries the appellant inflicted on the deceased were not in exercise of any right of private defence. They found that it was the appellant who started the fight with the deceased in the course of which he stabbed the deceased in the chest and then ran away. They also found that the appellant inflicted the fatal stab wound, that the fatal injury was an intended injury and was not caused accidentally or otherwise unintentionally and was an injury which was sufficient in the ordinary course of nature to cause the death of the deceased. They also found that the appellant was not so drunk as not to know what he was doing at the material time and was not so affected by alcohol as to be incapable of forming the specific intent under Clause (c) of section 300 of the Penal Code. They also found that it was the appellant who provoked the deceased and picked up a fight with him. Accordingly, they found the appellant guilty of murder as charged as, on the evidence, the appellant was not entitled to the benefit of any of the General Exceptions laid down in the Penal Code nor to any of the Exceptions to section 300 of the Penal Code.

During the appeal, it was urged on behalf of the appellant that the trial judges erred in accepting Loganathan's evidence and Suppiah's evidence and should have accepted the appellant's evidence. Our attention was drawn to some contradictions in the evidence of Loganathan and Suppiah but in our judgment these were immaterial contradictions in the context of the clear and undisputed facts that the appellant had returned to the scene armed with a knife and that it was the appellant who inflicted the stab wounds on the unarmed deceased. Another submission on behalf of the appellant which was rejected was that the trial judges erred in law and in fact in admitting in evidence the cautioned statement of the appellant. In our judgment the trial judges were entitled on the evidence before them at the "trial within a trial" to find that there was no inducement, threat or promise and that the appellant's cautioned statement was made voluntarily.

In our judgment the evidence was overwhelming that the appellant caused the death of the deceased in circumstances which amounted to murder under section 300 of the Penal Code and we accordingly dismissed the appeal.

Appeal dismissed.

Solicitors: *Netto, Low & Pang.*

BANK OF CANTON LTD. v. DART SUM TIMBER (PTE.) LTD.

[C.A. (Chua, Kulasekaram and D'Cotta JJ.) March 14, 1978]
[Singapore — Civil Appeal No. 53 of 1977]

Practice and Procedure — Two actions in respect of same cause of action — Application for consolidation not granted — Plaintiff ordered to make election — Inherent jurisdiction to stay proceedings which are abuse of process — R.S.C. 1970, O. 4 r. 1 and O. 92 r. 4 — Supreme Court of Judicature Act (Cap. 15), First Schedule, para. 10.

In this case the claim of the appellants against the respondents was based on a guarantee given by the respondents in favour of the appellants whereby the respondents guaranteed payment to the appellants on demand all monies due and owing by Ta Leong Produce (Pte) Ltd. on the general balance of the account of that company with the appellants. The respondents filed their defence contending that the appellants had not given a notice of demand to them. The appellants had sent a notice of demand to the principal debtor, Ta Leong Produce (Pte) Ltd. and a carbon copy to the respondent. Subsequently the appellants on failure of the respondents to comply with their request to withdraw that defence, sent a notice of demand to the respondents and filed a fresh suit against them. They then applied for consolidation of both suits. The respondents on the other hand applied for an order that the appellants elect whether they intend to proceed on the first suit or the latter suit. The applications were heard by the Chief Justice who ordered that the appellants be ordered to elect within 42 days which suit they intended to proceed with and that pending the making of the election all further proceedings be stayed. No order was made on the order for consolidation. The appellants appealed to the Court of Appeal.

Held: (1) the respective causes of action in this case are not separate and distinct causes of action but are the same causes of action and the learned Chief Justice had exercised the discretion given to him by Order 4 Rule 1 correctly in refusing to make the order for consolidation;

(2) the court has an inherent jurisdiction to stay proceedings which are an abuse of its process. If a plaintiff brings

two actions in the same court in respect of the same cause of action the court will generally regard it as an abuse of the process of the court and vexatious and will put the plaintiff to his election as to which cause of action he will continue and stay one of the actions. In this respect the learned Chief Justice had exercised his discretion correctly.

Case referred to:-

(1) *McHenry* v. *Lewis* (1883) 22 Ch. D 397 at p. 400.

COURT OF APPEAL.

K.S. Chung for the appellants.

Y.M. Jumabhoy for the respondents.

Chua J. (delivering the judgment of the Court): The appellant in this case, The Bank of Canton Ltd., commenced an action in Suit No. 658 of 1976 against Ta Leong Produce (Pte) Ltd. (the first defendants), Dart Sum Timber (Pte) Ltd. (the respondents in this appeal and the second defendants in the suit) and five others, on February 14, 1976.

The claim of the appellants against the respondents is based on a guarantee in writing dated July 31, 1974, signed by the respondents in favour of the appellants whereby the respondents guaranteed payment to the appellants on demand of all moneys due and owing by Ta Leong Produce (Pte) Ltd. on the general balance of the account of Ta Leong Produce (Pte) Ltd. with the appellants.

The respondents filed their defence on March 7, 1977. In paragraphs 11, 12 and 13 of their defence the respondents contended (*inter alia*) that the appellants did not give a notice of demand to them and therefore the sum claimed was not due at the commencement of the action.

A notice of demand dated January 14, 1976, before action was sent by the appellants addressed to the principal debtor, Ta Leong Produce (Pte) Ltd. with carbon copies to the respondents and the other five defendants. The respondents contend that the notice of demand should be addressed to them.

Two months after the defence was filed, the appellants' solicitors wrote to the respondents' solicitors on May 3, 1977, in regard to paragraphs 11, 12 and 13 of the defence. The letter said (*inter alia*) that "Our clients' stand in these proceedings is that by that letter (January 14, 1976) or by that letter and the subsequent issue of the writ, our clients had duly made demand" and that "As you are aware, our clients are still entitled to make a demand now which they will do, unless you abandon the defence contained in paragraphs 11, 12 and 13 of the defence. If your clients are not prepared to abandon the defence in those 3 paragraphs, the obvious course for our clients to take would be to make a fresh demand for all sums due up to date, commence another suit based on the previous and the fresh demands and apply to consolidate the new suit with the present suit."

The respondents' solicitors did not reply. Whereupon a demand dated May 9, 1977, addressed to the respondents was made on the respondents in respect of a greater sum representing principal and further interest.

Following upon that demand a fresh suit was commenced by the appellants being Suit No. 1401 of 1977, against the respondents alone.

This second suit is based on the same guarantee in writing dated July 31, 1974, and on the earlier demand in the letter of January 14, 1976, and also on the subsequent demand, as an alternative, in the letter dated May 9, 1977. The issues in this second suit are the same as in the first suit except that an additional demand in the form of the letter of May 9, 1977, is relied upon in the second suit.

On June 17, 1977, the appellants applied for consolidation of both the suits.

On June 24, 1977, the respondents, took out a summons in the first suit for an order (*inter alia*):

"(a) that the appellants elect whether they intend to proceed with Suit No. 658 of 1976 or with Suit No. 1401 of 1977;

(b) that upon such election being made, all further proceedings in the other suit be stayed or struck off;

(c) that in default of such election being made all further proceedings in both suits be stayed or struck off."

On the 13th of July, 1977, the appellants took out a summons in Suit No. 1401 of 1977 for an order that Suit No. 1401 of 1977 be consolidated with Suit No. 658 of 1976.

All the three applications were heard on July 25, 1977, by the learned Chief Justice. On the summons of the respondents the following orders were made: —

"(a) the appellants were ordered to elect within 42 days whether they intend to proceed with Suit No. 658 of 1976, or Suit No. 1401 of 1977;

(b) that upon such election, all further proceedings in the other suit be stayed;

(c) that all further proceedings in both suits be stayed pending the making of the election."

On the applications of the appellants in the two suits it was ordered that there be no order for consolidation.

The appellants now appeal against the orders made by the learned Chief Justice.

The first point taken by counsel for the appellants is that the learned Chief Justice was wrong in failing to order the consolidation of the two suits under Order 4 rule 1. That rule provides:

"Where two or more causes or matters are pending, then, if it appears to the court —

(a) that some common question of law or fact arises in both or all of them; or

(b) that the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions; or

(c) that for some other reason it is desirable to make an order under this Rule,

the court may order those causes or matters to be consolidated on such terms as it thinks just or may order them to be tried at the same time or one immediately after another or may order any of them to be stayed until after the determination of any other of them."

In the present case the respondents are sued in the two suits upon the same guarantee in writing dated July 31, 1974, and the respective causes of action are not separate and distinct causes of action but are

the same causes of action. It is to be noted that the second suit was commenced as a consequence of the respondents' failure to reply to the appellants' letter requesting that the respondents abandon their defence in the first suit that no notice of demand was given to them. It seems to us that the learned Chief Justice has exercised the discretion given him by rule 1 of Order 4 correctly and we would not interfere with the orders made.

The next point taken is that the learned Chief Justice was wrong in ordering the appellants to elect and in ordering a stay of the suit which following the election is not to be proceeded with. The appeal is argued on the following grounds: —

First, it is contended that there is no authority in law requiring such an election or such a stay; that the Rules of the Supreme Court make no provision for an election to be required and make no provision for ordering a stay of proceedings in the circumstances.

Secondly, it is contended that the direction that the appellants make an election and the order of stay of the other suit is unfair, oppressive, a denial of justice and prejudicial to the appellants.

Thirdly, it is submitted that the respondents have failed to prove (the burden of proof is on them) that the continuance of either action would be oppressive or vexatious to them or would be an abuse of the process of the court in some other way.

We are unable to accept any of the submissions made by counsel for the appellants.

The court has an inherent jurisdiction to stay proceedings which are an abuse of its process, such as frivolous, vexatious or harassing proceedings. (See paragraph 10 of the First Schedule to the Supreme Court of Judicature Act (Cap. 15) and Order 92 rule 4 of the Rules of the Supreme Court).

If a plaintiff brings two actions in the same court in respect of the same cause of action the court will generally regard it as an abuse of the process of the court and vexatious and will put the plaintiff to his election as to which action he will continue and will stay one of the actions.

In *McHenry* v. *Lewis*[1] Jessel M.R. said (at page 400):

"In this country, where the two actions are by the same man in courts governed by the same procedure, and where the judgments are followed by the same remedies, it is *prima facie* vexatious to bring two actions where one will do And, indeed, this has been recognised, I believe, for ages by the practice of the old Court of Chancery, which always put up a plaintiff to his election by an order of course if he was suing for the same cause of action both at Law and Equity."

In our view the learned Chief Justice has exercised his discretion correctly.

Appeal dismissed.

Solicitors: *Chung & Co.; Y.M. Jumabhoy & Co.*

IN THE MATTER OF AN ADVOCATE AND SOLICITOR

[O.C.J. (Wee Chong Jin C.J., Chua and Rajah JJ.) January 24, 1978]

[Singapore — Originating Summons No. 99 of 1977]

Legal Profession — Advocate and Solicitor — Application to show cause — Letter to advocate and solicitor informing him of investigation on charge of paying money to a tout — Disciplinary Committee set up — Disciplinary Committee making further allegation that advocate and solicitor had received costs other than taxed costs — Whether Disciplinary Committee had power to investigate — Whether allegations proved beyond reasonable doubt — Whether duty of solicitor to make inquiries — Legal Profession Act (Cap. 217), ss. 84, 88 and 93.

In this case as a result of a complaint by the Director of the C.P.I.B. the Council of the Law Society, after referring the matter to the Inquiry Committee and deciding that there should be a formal investigation wrote to the respondent informing him that there will be a formal investigation into the complaint of payment of monies to a tout for bringing in accident cases. The matter was referred to a Disciplinary Committee and the Disciplinary Committee then specified the following complaints against the respondent: (i) payment of monies to a tout for bringing in accident cases and (ii) receiving other than taxed costs from accident victims. After hearing and investigating the matters the Disciplinary Committee submitted their report in effect stating that the charges were proved. An application was thereupon made calling upon the respondent to show cause why he should not be dealt with under section 84 of the Act.

Held: (1) by virtue of section 88 of the Legal Profession Act it is the Council of the Law Society that formulates charges against an advocate and solicitor and under section 93(1) of the Act a Disciplinary Committee appointed by the Chief Justice can only investigate matters referred to it by the Council and cannot decide on its own motion to investigate matters not specifically referred to it by the Council. Therefore all or any of the matters relating to the receiving and accepting of monies from accident victims other than taxed costs could not properly have been heard by the Disciplinary Committee and hence were not properly before the court;

(2) the charge under section 84(2)(e) of the Act must be proved beyond reasonable doubt and in this case the evidence was insufficient to justify the Disciplinary Committee drawing the irresistible inference which led them to find that the respondent was guilty of the charge. Accordingly no order would be made on the application;

(3) there is no statutory rule in Singapore which is equivalent to Rule 4 of the English Solicitors' Practice Rules 1936 and as the respondent was not specifically charged with having failed to make reasonable inquiry before accepting instructions it was unnecessary for the court to consider whether or not the respondent had contravened section 84(2)(h) of the Legal Profession Act.

Case referred to:-

(1) *Re a Solicitor* [1945] 1 All E.R. 445.

ORIGINATING SUMMONS.

Tay Soo Tee for the Law Society.

L.A.J. Smith for the respondent.

Rajah J. (delivering the judgment of the Court): This is an application under section 98(6) of the Legal Profession Act (Cap. 217) (hereinafter referred to as "the Act") calling upon Ong Tiang Choon (the respondent), an advocate and solicitor of this court, to show cause why he should not be dealt with under the provisions of section 84 of the Act, the relevant portions of which read:—

"84(2) Such due cause may be shown by proof that such person —

(b) has been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty or guilty